

NTSB Order No.  
EM-7

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D. C.

Adopted by the National Transportation Safety Board  
at its office in Washington, D. C.,  
on the 24th day of September, 1969.

WILLARD J. SMITH, Commandant, United States Coast Guard

vs.

GILBERT LEROY SNIDER

Docket ME-2

OPINION AND ORDER

Appellant is seeking review of a decision of the Commandant affirming the revocation of his seaman's documents under authority of 46 U.S.C. 239b.<sup>1</sup> The Commandant's action was taken after appellant had appealed to him (Appeal No. 1701) from the initial decision of Coast Guard Examiner Tilden H. Edwards. Appeal to this Board from the Commandant's action is authorized under 49 U.S.C. 1654(b) (2).<sup>2</sup>

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<sup>1</sup>46 U.S.C. 239b, in relevant part, provides that "the Secretary [of the Department in which the Coast Guard is operating] may--

. . . (b) take action, based on a hearing before a Coast Guard examiner, under hearing procedures prescribed by the Administrative Procedure Act, as amended, to revoke the seaman's document of--

(1) any person who, subsequent to July 15, 1954, and within ten years prior to the institution of the action, had been convicted in a court or record of a violation of the narcotic drug laws of the United States, the District of Columbia, or any State or Territory of the United States, the revocation to be subject to the conviction's becoming final. . . . "

<sup>2</sup>The rules of procedure for appeals to this Board from decisions of the Commandant sustaining orders of revocation of seamen's documents are set forth in 14 C.F.R. Part 425.

The examiner's decision was rendered after holding an evidentiary hearing, at which Appellant was represented by counsel. In his decision, the examiner ordered the revocation of all documents held by Appellant at the time of the hearing<sup>3</sup> because the evidence before him disclosed that Appellant had been convicted in 1959 of violation of a narcotic drug law of California by a court of record of the State.<sup>4</sup> Counsel for Appellant did not contest this evidence, but relied instead upon various motions to dismiss the proceeding for procedural or constitutional reasons.

The examiner ruled against these motions and concluded that the evidence was sufficient to establish the case for revocation, according to the requirements of 46 U.S.C. 239b. The examiner stated that his authority under the statute and implementing regulations of the Coast Guard is limited, and that: "No discretion is left to the examiner in rendering his Order [of revocation] after a finding of guilty [i.e., uncontroverted proof of narcotics conviction as required by 46 U.S.C. 239b]." <sup>5</sup>

On appeal to this Board and the Commandant,<sup>6</sup> counsel for appellant contends that the examiner committed reversible error in overruling his motions to dismiss, based on the grounds that:

(1) Appellant's merchant mariner's document was not specially

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<sup>3</sup>These documents were described by the examiner as follows: "an outstanding 'E' Certificate of Service and a Certificate of Identification No. Z-554-153, issued by the Coast Guard or its predecessor authority for service on Merchant Vessels of the United States in the capacities of ordinary seaman, wiper or messman."

<sup>4</sup>A copy of the examiner's decision is attached hereto as Exhibit A.

<sup>5</sup>46 C.F.R. 137.03-10 provides in part:

"(a) After proof of a narcotics conviction by a court of record as required by Title 46, U.S. Code, section 239b, . . . the Coast Guard may take action based upon the conviction. After proof of the alleged conviction. . . , the examiner shall enter an order revoking the seaman's. . . document." (Emphasis added.)

<sup>6</sup>A copy of the Commandant's decision is attached hereto as Exhibit B.

validated by the Coast Guard and not currently valid;

(2) There is no proper delegation of authority from the Secretary of Transportation to the Commandant to take the action here involved; and

(3) The statute under which this revocation action was taken (46 U.S.C. 239a and b) is not reasonably related to a legitimate legislative purpose under the Federal Constitution.

In support of his first contention, the appellant urges that the examiner had no jurisdiction to take action under 46 U.S.C. 239b(b) (1), since his application for a merchant mariner's document bearing a special validation endorsement of the Coast Guard for emergency service had not been acted upon and, therefore, was not currently valid. It was established at the outset that the seaman's documents held by appellant at the time of the hearing consisted of a certificate of identification (No. Z-554-153) and a certificate of service for the steward's department (No. E.578-174). The certificates are outdated forms, replaced by the Coast Guard after November 1, 1945, by the present-day form, known as the merchant mariner's document. Coast Guard regulation 46 C.F.R. 12.02-5 reflects this transition.

The so-called "Z" and "E" certificates held by appellant no longer represent authority to serve aboard U. S. merchant vessels, now that merchant mariner's documents are required. However, as the examiner found, these certificates are still honored by the Coast Guard as a qualifying basis for issuing the new documents.<sup>7</sup>

In addition to his "Z" and "E" certificates, apparently valid, appellant was in possession of a Coast Guard receipt for his merchant mariner's document. The receipt was dated July 28, 1958, and bore a notation that appellant had made application on that date for special validation of the document by the Coast Guard, "which issuance was pending." (Tr., p. 2.) Appellant explained that: "In 1958, I sent them [his documents] in to get them validated, then I was arrested before I pick them up." (Tr., p. 3.) The record shows that shortly after appellant's release from prison in April 1967, the Coast Guard instituted the present action against his seaman's documents.

The special validation, which appellant was in the process of

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<sup>7</sup>46 C.F.R. 12.02-11(a), (b) indicate that a holder of the "Z" and "E" certificates in a valid status would be entitled to issuance of a merchant mariner's document "upon request and without examination."

obtaining in 1958, is required under the Coast Guard regulations in 33 C.F.R. Part 121, entitled: "Special Validation Endorsement for Emergency Service for Merchant Marine Personnel." Section 121.01(a) of these regulations provides:

"(a) Except as otherwise provided in this section, no person shall be employed on a merchant vessel of the United States of 100 gross tons or over unless he is in possession of a Merchant Mariner's document bearing a special validation endorsement for emergency service."

exceptions to this requirement for special validation are set forth in subsection (d), under which the holder of an invalidated document is to be given preference for employment aboard any U. S. merchant vessel, in case of replacements or additions to crew in a foreign port, when holders of validated documents are not available.

While cognizant of this exception to the special validation requirement, appellant contended before the Commandant that nonvalidation so substantially limits the use of a merchant mariner's document that "in effect, the document is not currently valid and cannot be revoked." The Commandant concluded, however, that even in view of the limited use to which appellant's document could be put, revocation "would preclude him from serving in these capacities and the Coast Guard clearly has jurisdiction in this matter."

We believe the reasoning of the Commandant provides a sufficient answer to appellant's contention. However, more fundamentally, the power of revocation under 46 U.S.C. 239b, by definition in 46 U.S.C. 239a (c), extends to "any document authorized by law or regulation to be issued to a merchant mariner by the Secretary [of the Department in which the Coast Guard is operating]. (Emphasis added.) Thus, the status is not limited to currently valid documents, but reaches any and all documents issued by the Coast Guard to merchant mariners. The coverage of the statute unquestionably includes, for example, a merchant mariner's document issued by the Coast Guard under delegated authority, from the Secretary of the Treasury.<sup>8</sup> Furthermore, for the statute's full force and effect, it would be necessary to regard the revocation of a seaman's document as being applicable to all

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<sup>8</sup>Reorganization Plan No. 26 of 1950, transferred the functions of the Commandant to the Secretary of the Treasury, with exceptions not here applicable. The function of certificating seamen was delegated back to the Commandant by Treasury Department Order 120, dated July 31, 1950.

documents held as indicia of that status. This would especially be true of documents purporting to show a significant degree of qualification for current employment in the U. S. merchant marine, such as appellant's "Z" and "E" certificates which serve as a qualifying basis for issuance of a merchant mariner's document upon request and without examination.<sup>9</sup> While the record is not crystal clear as to appellant's possession of an unvalidated merchant mariner's document prior to the hearing, the power of revocation most certainly applies to that document under our rationale. Accordingly, we have determined that appellant's motion to dismiss the proceeding due to the invalidated status of his document is without merit.

Appellant next challenges the jurisdiction of the Commandant to take action under 46 U.S.C. 239b, for lack of a specific delegation from the Secretary of Transportation.<sup>10</sup> In our view, this contention of appellant lacks substance. The Department of Transportation Act (Public Law 89-670, approved October 15, 1966; 49 U.S.C. 1651 et seq.) took effect on April 1, 1967, as described by Executive Order No. 11340, dated March 30, 1967.<sup>11</sup> Under section 6(b) (1) of this Act, the Coast Guard was transferred from the Department of the Treasury to the new Department of Transportation and "all functions, powers, and duties, related to the Coast Guard" of the Secretary of the Treasury were vested in the Secretary of Transportation.<sup>12</sup> Therefore, at the time of the hearing in this case, held on June 13 and July 6, 1967, the power of revocation under 46 U.S.C. 239b had passed from the Secretary of the Treasury and was then vested in the Secretary of Transportation by operation of law.

Appellant contends that the Secretary of Transportation has

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<sup>9</sup>See footnote 7, supra.

<sup>10</sup>46 U.S.C. 239a(b) confers the power of revocation under 46 U.S.C. 239b on the Secretary "of the department in which the Coast Guard is operating." This was the Secretary of the Treasury when the statute first took effect. The Secretary of the Treasury delegated the functions vested in him by 46 U.S.C. 239a, b, to the Commandant by Treasury Department Order 167-9, dated August 3, 1954. See 46.C.F.R. 137.01-5 (b) which recites this delegation and further delegates the Commandant's authority "to revoke a license, certificate, or document issued to a person by the Coast Guard or predecessor authority. . ." to examiners.

<sup>11</sup>32 Fed. Reg. 5453, published April 1, 1967.

<sup>12</sup>49 U.S.C. 1655(b) (1).

not specifically delegated his power of revocation under 46 U.S.C. 239b to the Commandant, and that the previous delegation of that power by the Secretary of the Treasury<sup>13</sup> was canceled when the Coast Guard began operations as part of the Department of Transportation.

The Commandant and the examiner, however, did not profess to act in this case under the previous delegation of the Secretary of the Treasury. Rather, they invoked a delegation issued by the Secretary of Transportation on April 1, 1967, under which the Commandant received the Secretary's authority under section 6(b) (1) of the Department of Transportation Act "relating generally to functions, powers, and duties of the Coast Guard, including, but not limited to law enforcement, safety of life and property at sea, aids to navigation, search and rescue, ice breaking, oceanographic research and military readiness functions."<sup>14</sup> We agree with the examiner and the Commandant that this delegation provides sufficient authority for the Commandant's exercise of the Secretary's power of revocation under 46 U.S.C. 239b.

Appellant attempts to vitiate the delegation's relationship to this proceeding, by contending that it contains no specific reference to 46 U.S.C. 239b. It is sufficiently clear to us that the delegation was all-inclusive of the functions, powers, and duties transferred from the Secretary of the Treasury and vested in the Secretary of Transportation relating to the Coast Guard; among which was the power of revoking seamen's documents under 46 U.S.C. 239b. Accordingly, we conclude that the Commandant's action in this matter was based on a proper delegation to him of the authority of the Secretary of Transportation under 46 U.S.C. 239b.<sup>15</sup>

Appellant's third and final contention on appeal is that 46 U.S.C. 239b is an unconstitutional exercise of the Commerce power by Congress, because it bears no reasonable relation to the promotion of safety at sea. Legislative history cited by appellant shows that the statute was directed at "convicted addicts and/or traffickers. . . now able to serve in the United States merchant marine to the detriment of shipboard safety, morale and discipline because (presently) we are unable to proceed against them for

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<sup>13</sup>See footnote 10, supra.

<sup>14</sup>49 C.F.R. 1.4(a); 32 F.R. 5606-7, published April 5, 1967.

<sup>15</sup>This Board exercise the Secretary's power under 46 U.S.C. 239b(b), insofar as it would include the function of final administrative review of the Commandant's action, under section 5 (b) (2) of Public Law 89-670. 49 U.S.C. 1654 (b) (2).

narcotics offense ashore." <sup>16</sup> On the ground that no proof is required to show that the seaman's conviction of narcotics offenses ashore is related to his duties at sea, or to use or smuggling of narcotics, appellant further contends that the statute deprives him of due process.

We believe it is self-evident that a seaman convicted of violation of narcotics offenses ashore would be ill-suited for employment aboard U. S. merchant vessels, for reasons that relate to the safety of life and property at sea. It should be obvious that such individuals pose a serious threat to morale and discipline as well as safety aboard U. S. merchant vessels; and that these are purposes with which the Congress has vital concern under the Federal Constitution. Appellant has presented no matter at the hearing or on appeal which would warrant our holding the statute unconstitutional or what its application to the facts in this case is unconstitutional.

Appellant also attacks the Coast Guard regulation in 46 C.F.R. 137.03-10 as a violation of due process, since it calls for "mandatory revocation" by the examiner after proof of narcotics conviction by a court of record.<sup>17</sup> However, this attack is again based on abstract consideration and appellant has nowhere attempted to show the relevancy of this point to the facts of this case. The Board is not disposed to test the reasonableness of the regulation, where no facts are adduced for consideration of any other action save revocation under 46 U.S.C. 239b (b) (1).

Upon consideration of the record and the pleadings, and in light of appellant's brief, we are satisfied that the evidence supporting the examiner's revocation of appellant's seaman's documents under 46 U.S.C. 239b was substantial, probative, and reliable. Hence, we adopt as our own, the findings and conclusions of the examiner, as affirmed by the Commandant, except to the extent modified herein. Furthermore, we agree that the sanction imposed was warranted in this case.

ACCORDINGLY, IT IS ORDERED THAT:

1. The instant appeal be and it is hereby denied; and
2. The order of the Commandant affirming the examiner's revocation of appellant's seaman's documents under the authority of

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<sup>16</sup> (1954) U. S. Code Cong. and Admin. News, pages 2258, 9; Senate Report No. 1648.

<sup>17</sup>See footnote 5, supra.

46 U.S.C. 239b be and it hereby is affirmed.

REED, Chairman, and LAUREL, McAdams, and THAYER, Members of the Board, concurred in the above opinion and order.

(SEAL)